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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/008,259

10/29/2001

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03/08/2010

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EXAMINER

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ART UNIT

PAPER NUMBER

3688

MAIL DATE

DELIVERY MODE

03/08/2010

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* TUCKER L. SMITH and  
JAMES L. BROWNING

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Appeal 2009-006255  
Application 10/008,259  
Technology Center 3600

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Decided: March 8, 2010

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*Before* MURRIEL E. CRAWFORD, HUBERT C. LORIN, and  
BIBHU R. MOHANTY, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Tucker L. Smith et al. (Appellants) seek our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1-24. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

## SUMMARY OF DECISION

We REVERSE.<sup>1</sup>

## THE INVENTION

This invention is a system and method for generating a user profile based on user activity at a terminal. Specification 1:5-7.

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A system for profiling different users having a common terminal identifier comprising:
  - memory for storing user profile histories, each user profile history being stored in association with a key;
  - a server for receiving user activity data from clients over a computer network;
  - a user activity data analyzer for receiving the user activity data from the server and for extracting profile data from the user activity data;
  - a user identifier for searching the user activity data for key data that identifies one of a user terminal

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<sup>1</sup> Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed Aug. 14, 2008) and Reply Brief ("Reply Br.," filed Dec. 16, 2008), and the Examiner's Answer ("Answer," mailed Oct. 16, 2008).

and a user account and for determining whether the key data located in the user activity data corresponds to a key stored in the memory; and  
a user profile generator for generating a user profile history from the extracted profile data and a user identifier key from the key data in response to the key data corresponding to a key stored in the memory and the extracted profile data not corresponding to the user profile history stored in the memory in association with the key that corresponds to the key data, the generated user identifier key indicating the generated user profile history is associated with a user that is different than a user associated with the key stored in the memory.

### THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Blasko	US 2001/0049620 A1	Dec. 6, 2001
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The following rejections are before us for review:

1. Claim 1 and 13 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Appellants regards as the invention.
2. Claims 1-24 are rejected under 35 U.S.C. §102(e) as being anticipated by Blasko.

## ISSUES

The first issue is whether claims 1 and 13 are indefinite under 35 U.S.C. § 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which the Appellants regards as the invention. Specifically, the issue is whether the Examiner erred in finding the claim indefinite because “is not clear how the generated user identifier key indicates that the generated user profile history is associated with a user that is different from a user associated with the key stored in the memory.”

Answer 3.

The second issue is whether claims 1-24 are anticipated under 35 U.S.C. § 102(b) by Blasko. Specifically, the issue is whether Blasko describes a step of or a user profile generator for generating a user identifier key from the key data and a user profile history from the extracted profile data in response to the key data corresponding to a key stored in the memory and the extracted profile data failing to correlate to the user profile history stored in the memory in association with the key stored in the memory.

## FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Blasko describes a system for transaction profiling. Blasko [0016].
2. Blasko describes receiving transaction data, such as a purchase record for purchases made at a retail store, data related to Internet

purchases, web page viewing, or advertisement watched on television. Blasko [0042].

3. Blasko describes generating a profile vector from the transaction data. Blasko [0043]-[0044].
4. Blasko states:

[0020] The generated transaction profile vector is assigned a transaction identification (ID). This transaction ID may simply comprise a random attribute such as an arbitrary number or value. Preferably, this number or value is selected not to reflect any personal information about the user and instead is a random and arbitrary number, e.g. the transaction ID may be based on the time and date of purchase, the number of sales made that day. Alternatively, this transaction ID may be the identifier for the server generating the profile vector. In the television environment, the transaction ID may be a MAC\_ID for the STB.

[0021] After the profile vector has been assigned a transaction ID, the profile vector having a transaction ID is evaluated for the purposes of selecting a suitable targeted advertisement to be presented to the user. This evaluation may be based on a plurality of factors, e.g., the current profile having a transaction ID may be compared against previously stored profile vectors to select a suitable targeted advertisement using collaborative filtering techniques. Alternatively, the targeted advertisement may be based solely on information contained in the current profile vector. In instances where more than one transaction from the same user are observed and analyzed, the profile vectors are assigned a profile ID, stored in a storage medium, and indexed by the profile ID. It is to be noted that the profile ID is usually a

random or arbitrary number selected carefully to guard user privacy.

Blasko [0020] – [0021]. *See also* Blasko [0052] – [0053].

5. Blasko describes a states:

Based on the configuration, the evaluator may use one or more pieces of deterministic information identifying user's identity. For example, the profile vector may include the MAC\_ID of the transmitting STB. Alternatively, the profile vector may only include a random ID that identifies the origination source of the profile vector, but no other deterministic features.

[0130] If one or more deterministic features are present, the evaluator 702 communicates to a secure correlation server 708 for correlating the user identification with the previously stored profile vector information. This correlation helps to identify the user's preferences and interests and thus assist in providing one or more customized/personalized incentives/offers to the user.

Blasko [0129]-[0130].

## PRINCIPLES OF LAW

### *Definiteness*

The test for compliance is whether the claims set out and circumscribe a particular area with a reasonable degree of precision and particularity when read in light of the application disclosure as they would be interpreted by one of ordinary skill in the art. *In re Moore*, 439 F.2d 1232, 1235 (CCPA 1971).

*Anticipation*

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

ANALYSIS

*The rejection of claims 1 and 13 under §112, second paragraph.*

The Examiner rejected claims 1 and 13 as being indefinite “because it is not clear how the generated user identifier key indicates that the generated user profile history is associated with a user that is different from a user associated with the key stored in the memory.” Answer 3. The Examiner seems to argue that the claims must include an explanation of how the generated user identifier key indicates that the history is associated with a different user. Answer 10-11. The Appellants point to page 19, lines 3-8 and page 20, lines 3-6 of the Specification, which describe that if a correlation does not exceed a threshold, then an additional user is detected and a user identifier key is generated. *See* App. Br. 10. The key being generated indicates that the generated user profile history is associated with a user that is different from a user associated with the key stored in the memory.

However, the test for definiteness is whether one skilled in the art would understand the bounds of the claim when read in light of the specification. *Orthokinetcs* 806 F.2d 1565, 1676 (Fed. Cir. 1986). If the claims read in light of the specification reasonably apprise those skilled in the art of the scope of the invention, Section 112 demands no more.



*Hybritech*, 802 F.2d 1367, 1385 (Fed. Cir. 1986). “The purpose of claims is not to explain the technology or how it works, but to state the legal boundaries of the patent grant. A claim is not “indefinite” simply because it is hard to understand when viewed without benefit of the specification . . .” *S3 Inc. v. nVIDIA Corp.*, 259 F.3d 1364, 1369 (Fed. Cir. 2001).

The Examiner has not established that, by lacking an explanation of “how the generated user profile history is associated with a user that is different from a user associated with the key stored in the memory,” one of ordinary skilled in the art would not understand the bounds of the claim when read in light of the Specification. Accordingly, we find that the Examiner erred in rejecting claims 1 and 13, under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Appellants regards as the invention.

*The rejection of claims 1-24 under §102(e) as being anticipated by Blasko.*

The Appellants argue that Blasko does not describe “generating a user identifier key from the key data and a user profile history from the extracted profile data in response to the key data corresponding to a key stored in the memory and the extracted profile data failing to correlate to the user profile history stored in the memory in association with the key stored in the memory.” Reply Br. 5 (emphasis original). *See also* App. Br. 11-13.

The Examiner equates the claimed generated user identifier key to the profile ID in Blasko and the key data to the transaction ID. Answer 5. The Examiner then cites to paragraph 130 of Blasko and the correlation server to teach that the generating is in response to the key data corresponding to a

key stored in the memory and the extracted profile data failing to correlate to the user profile history stored in the memory in association with the key stored in the memory. Answer 5.

However, in Blasko the generation of the profile ID cannot be *in response* to the key data corresponding to a previously stored key *and* the extracted profile data *failing* to correlate to the user profile history stored in the memory in association with the key stored in the memory. In Blasko, if the key data (*i.e.* transaction ID) corresponds to the previously stored key, then the extracted profile data also correlates to the user profile history stored in the memory in association with the key stored in the memory.

Using the Examiner's interpretation, Blasko describes that the profile ID (*i.e.* user identifier key) is generated in response to the transaction ID (*i.e.* key data) matching a transaction ID of another profile vector (*i.e.* previously stored key). FF 3. However, in Blasko the transaction ID is also the data from the profile vector (*i.e.* extracted profile data) that is used to correlate the profile vector to previously stored profile vector information. *See* FF 3 and 4. Blasko describes that the transaction ID may be an identifier for the server generating the profile vector, such as a MAC\_ID. FF 3. Blasko also describes that if the profile vector contains deterministic information, such as the MAC\_ID, (*i.e.* the transaction ID is the MAC\_ID), the user identification (*i.e.* the transaction ID) is communicated to the secure correlation server to correlate the user identification to stored profile vector information. FF 4. Therefore, in the Examiner's interpretation of Blasko, if the key data (*i.e.* transaction ID) corresponds to a key stored in the memory (transaction IDs previously stored profile vectors) then the extracted profile data (*i.e.* transaction ID) also correlates to the user profile history stored in

the memory in association with the key stored in memory (*i.e.* same previously stored profile vectors).

In this interpretation, Blasko does not describe a situation where a user identifier key (*i.e.* profile ID) is generated *in response* to the key data (*i.e.* transaction ID) corresponding to a key stored in the memory (transaction IDs previously stored profile vectors) *and the extracted profile data (i.e. transaction ID) failing to correlate* to the user profile history stored in the memory in association with the key stored in memory (*i.e.* same previously stored profile vectors). Accordingly, we find that the Appellants have over come the prima facie showing of anticipation and we reverse the rejection of claims 1 and 13, and claims 2-12 and 14-24, dependent thereon, under 35 U.S.C. § 102(b) as anticipated by Blasko.

### CONCLUSIONS OF LAW

We conclude that the Examiner erred in rejecting claims 1 and 13 under 35 U.S.C. §112, second paragraph and that the Examiner has not established a prima facie case of anticipation in rejecting claims 1-24 under 35 U.S.C. § 102(b) as anticipated by Blasko.

### DECISION

The decision of the Examiner to reject claims 1-24 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

Appeal 2009-006255  
Application 10/008,259

REVERSED

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